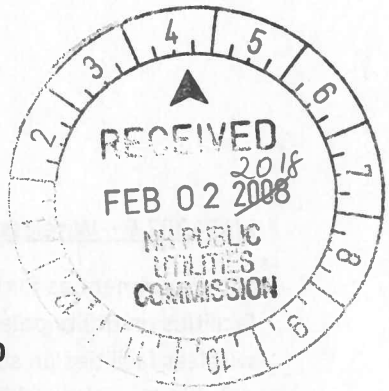

Comments of TVC Albany, Inc., d/b/a FirstLight Fiber

The New Hampshire Public Utilities Commission

On Proposed Readoption with Amendments of PUC Rule 1300

NH PUC Docket No. DRM 17-139

February 2, 2018

Lawrence Lackey, Director - Regulatory

TVC Albany, Inc., d/b/a FirstLight ("FirstLight") respectfully submits the following comments to the Commission regarding its proposed re-adoption with amendments of administrative rule PUC 1300 governing utility pole attachments.

Since the State of New Hampshire has asserted state regulatory authority of utility pole attachments, a PUC administrative rule is a beneficial and effective way to express the state's policies regarding utility pole attachments. Rule 1300 established a procedural and policy framework under which pole owners and entities seeking to attach to those poles may negotiate agreements, under which the Commission will authorize or establish rental rates and other standard charges, and under which parties unable to reach agreement may request the Commission resolve disputes. FirstLight therefore supports re-adoption of Rule 1300, for the most part supports the amendments proposed, and in a few instances recommends slight changes as explained below.

PUC 1301.02 – Applicability:

The Commission proposes to add text to this section would expressly apply Rule 1300 to owners of poles that are providers of VoIP service or IP-enabled service. To the extent that the Commission is within its legal authority to do so, FirstLight supports this amendment, as it eliminates any doubt that the pole-owning voice providers that rely exclusively on VoIP or IP-enabled service shall be subject to Rule 1300.

PUC 1302 – Definitions – Excepted local exchange carrier:

FirstLight supports incorporation of this definition and term into Rule 1300; it brings the Rule 1300 up to date with the carrier classifications enacted in NH law and PUC rules after the last revision of Rule 1300. As a practical matter, incorporation of this definition appears to maintain the status quo in terms of which entities are subject to, or have rights or responsibilities under Rule 1300.

PUC 1302 – Definitions – Wireless service providers and information service providers:

FirstLight supports incorporation of these definitions into Rule 1300 and granting these providers the same rights to attach to utility poles as wireline communications service providers have. Both classes of service providers presently and will continue to advance the State of NH's objectives of promoting availability of broadband, internet access and wireless communications services. Non-discriminatory access to utility poles facilitates deployment of facilities by these providers.

PUC 1302.6 – Wireless Antennas:

Same comment as for inclusion of reference to wireless service providers. Placement of wireless facilities on utility poles can offer a less expensive, faster and visually less intrusive alternative to siting wireless facilities on stand-alone tower structures. Articulating the right to place such facilities on utility poles in New Hampshire should facilitate negotiation of pole attachment agreements between pole owners and wireless providers, and reduce a barrier to deployment of improved wireless services in New Hampshire.

PUC 1303.01(c) – Pole owner's obligation to consider alternatives:

The Commission proposes to add in Rule 1303(c) an express statement that pole owners shall not requested attachments if make-ready work or another alternative can be identified that would accommodate the additional attachment. This provision seems to be an affirmative restatement of 47 U.S.C. §224(f), which says a utility shall provide non-discriminatory access to any pole owned by it, yet can deny such access on a non-discriminatory basis where this is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.

In general, most instances of insufficient capacity, or safety or reliability concerns, can be addressed via placement of taller poles, rearrangement of existing plant, non-conventional attachment methods, safe and reasonable compromises to normal attachment clearances, or some combination of the foregoing solutions. If alternatives exist that do not compromise safety and reliability, and the entity requesting attachment is willing to pay the make-ready charges, there should be no good reason for a pole owner to deny a request for attachment. FirstLight is not aware that, in the absence of this additional provision, that pole owners have denied access to poles. Nonetheless, expressly stating the pole owners' obligation to identify and offer alternatives will proactively require pole owners to do so, affirming the requirement of 47 U.S.C. §224(f).

PUC 1303.07(c) – Cost responsibility for correcting non-compliant existing conditions:

This section of the current rule establishes an important concept, that should be maintained in the readopted rule -- namely, that the party presently requesting a new attachment should not bear cost responsibility for correcting non-compliant conditions that pre-dated the new entity's request.

The refinement of the language proposed by the Commission here – changing "shall not be *shifted to* the entity seeking to add an attachment" to "shall not be *assessed or imposed on* the entity seeking to add an attachment" – is beneficial; it appears to be more plainly state the Commission's intent. FirstLight supports this change to the rule.

PUC 1303.09 – Location of Attachments – Wireless and Wireline attachments to same pole:

The Commission proposes to add a sentence at the start of this section, stating: "No attaching entity shall be denied attachment solely because a wireless facility is to be located above the communications space on the pole." This provision would address a scenario where a wireless facility has been previously attached in the power space, and the pole owner denies another party's subsequent request to attach in the communications space. It would also address a scenario where a party seeks to attach a wireless facility to a pole to which another wireless facility has attached. While FirstLight has no

knowledge that a pole owner has denied a request to attach wireline facilities to a pole already occupied by a wireless facility, this modification to the rule should preempt any such denial. Just as the opposite holds true, there is no good public policy rationale for declaring any utility poles to be the exclusive domain of wireless facilities. The existing survey process, which is guided by NESC and NEC codes, enables safe and reliable occupancy of pole by multiple users, wireless and wireline concurrently.

PUC 1303.10 and 11 – Boxing of Poles, and Use of Extension Arms:

The Commission has not proposed to amend this subsection of Rule 1300. It is nonetheless worth noting that a bias in the existing language that the Commission might consider amending in the future. The bias stems from the phrase is "as defined in the company's *written* methods and procedures." (emphasis added.) It is common for pole owners to employ ad-hoc cable positions and attachment configurations for their own attachments when they deem it expedient. These practices are not necessarily fully defined or described in the company's written methods and procedures. Written methods and procedures may well be more restrictive than actual practices in the field. At a minimum, the appropriate benchmark in Rule 1300 for boxing – as well as extension arms – should be the pole owner or joint user's practice, not what their written procedures say.

The recent revision of the Maine PUC's rule goes a step farther, establishing a presumption that it would be unreasonable for the terms and conditions of a negotiated pole attachment agreement to prohibit "boxing poles (i.e. placing cables on both the road side and field side of a pole) which can be safely access by emergency equipment and bucket trucks or ladders provided that such technique complies with requirements of applicable codes." (See 65-407, Public Utilities Commission, Chapter 880, Section 2.B.1.) The revised Maine rule also establishes similar presumptions regarding prohibitions on use of extension arms, attaching cable below the lowest existing attachments, and pole-top wireless attachments. (Id. Sections 2.B.2-4). That rule allows a pole owner or joint-use entity to overcome the presumption "by presenting clear and convincing evidence that the dispute involves unique circumstances in which applying the presumption would produce an unreasonable or unsafe result."

If the Commission wishes to do more to promote economic and faster deployment of communications services, Rule 1300 ought to presume that measures that will enable that to happen are permissible, and allow restriction of those measures if unsafe or unreasonable. Rule 1300, in its current form, likely does the opposite, given that incumbents rather than entrants dictate the written methods and procedures applicable to poles. The Commission should consider modifying Rules 1303.10 and 1303.11 to establish the same presumptions as has the Maine PUC.

PUC 1303.09 – Location of Attachments – Lowest Attachment Position:

The current rule, which the Commission has not proposed to amend here, grants the current lowest attacher to move its cables and attachments lower yet on the pole, rather than allowing another attacher below it. This option has a substantial benefit to the current lowest attacher; it enables easier access for repair, using smaller equipment, and much greater ease in overlashing to existing cables. For these reasons, the incumbent attachers typically exercise the option to move down. The lowest attachment position is "prime real estate." A competitively neutral rule would not even grant the incumbent this preemptive right to move its attachments down. Nor would it require an entity that seeks to attach in an unoccupied low position to pay any portion of the incumbent's cost to move down

to the lowest position. Notwithstanding the facts that the incumbent attacher benefits from moving its attachment down the pole, and that requesting party is denied the advantage of the low position, the current rule nonetheless imposes 40 percent of the incumbent's cost on the party seeking to attach. As the moves are necessitated only their preference to be in the bottom position, at a minimum, the incumbent should be paying its own costs to move its cables. FirstLight is cognizant that the Commission has considered this issue before, but we suggest the Commission revisit this aspect of the rule.

PUC 1303.12 – Make-Ready Work Timeframes:

The proposed edits to the first sentence in this subsection clarify that the responsibility for timely completion of make-ready rests with the pole owner(s). This is helpful to all concerned, since the other attachers have licenses with the pole owners not with one another. Timely and efficient make-ready relies on communications and good faith coordination among all attachers. But when timelines are not met, the Licensors -- the owners of the poles – have primary responsibility to ensure timely completion. It is right for Rule 1300 to affirm that.

In addition, FirstLight supports the recommendations of UNH, CTIA and CenturyLink in regard to the maximum time intervals stated in the rule for completion of surveys and make-ready. After as exhaustive inquiry, the FCC adopted shorter time intervals that are worthy of adoption by the Commission.

PUC 1304.06 – Rate Review Standards:

FirstLight supports deletion of the reference to a superseded, 2007, FCC rate formula. The FCC's rate methodologies have evolved, and the State of New Hampshire will benefit if the Commission's rate review standards for pole attachments evolve along with the FCC's. The FCC's pole rate regulations may well be amended again, leaving with the Commission with a reference to a superseded FCC rule. To the extent that New Hampshire's administrative rules permit, the Commission might consider not replacing the reference to an old (2007) FCC rate regulation with a reference to the current (2017) FCC regulation.

In addition, as a practical matter, most attaching entities do not have the data (namely expenses, net investment figures, and pole counts by height) necessary to evaluate whether a pole owner's rates are consistent with the rule, nor the negotiating leverage to insist that a pole owner demonstrate that their pole rates are just and reasonable. Attaching entities are otherwise left with two disadvantageous options – accept the rates offered by each pole owner, or petition the Commission to investigate and establish a rate to be applied in an agreement between the parties to the dispute. With the possible exception of the largest attaching entities, few if any will petition the Commission and instead reluctantly accept the rates offered by the pole owner, not knowing whether they are just and reasonable. The Commission could address this information and leverage imbalance by amending Rule 1304.06 to direct each pole owner to periodically file calculations of pole rates calculated by application of the FCC's then-current rate formulae. And, further, by approving or directing each pole owner to modify rates proposed to comport with Rule 1304.06. The burden on pole owners that do no maintain accounting data that aligns strictly with the FCC's rate formulae could be addressed by establishing a safe-harbor presumption that the pole rates charged by those pole owners are reasonable if not more than 110% of the rates of their larger, peer pole owners.